

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 3353 – SB 3598

May 17, 2010

SUMMARY OF AMENDMENTS (018035, 017355): Amendment 018035 deletes all language following the enacting clause. Effective October 1, 2011, creates a Procurement Commission (Commission), a state Protest Committee (Committee), and an Advisory Council on State Procurement (Council). The three-member Commission replaces the current Board of Standards and is required to prescribe standards, rules, policies, and procedures governing the procurement, contracting, management, control, and disposal of all supplies and services by the state. The Commission will be made up of the Comptroller, and the Commissioners of General Services (DGS) and Finance and Administration (F & A). The Committee is authorized to act on any protest brought against any procurement opportunity within the state and is made up of the Treasurer, Commissioners of DGS and F & A or their designees provided that at least one member of the committee is not a designee. The 12-member Council is required to meet at least twice per year to discuss problems and provide recommendations for the improvement of the procurement process in the state. The Council will consist of five voting members representing various state agencies and seven non-voting members representing the bidder and vendor communities. The Council will provide comment on any changes to law, standards, rules, policies, and procedures proposed by the General Assembly or the procurement office. Prohibits members of the Council from serving more than four consecutive years as a non-voting member and requires a two-year lapse in service between the end of a member's term and the time at which they can be re-appointed.

Effective March 31, 2011, creates a Procurement Office (Office) that will reside in a department to be designated by the Governor with the consent of the Comptroller of the Treasury and requires the Governor to appoint a chief procurement officer (CPO) who will be a full-time public official to serve at the pleasure of the Governor. Authorizes the CPO to employ the necessary personnel to carry out the duties of the Office with compensation amounts to be fixed by the Governor. Authorizes the transfer of procurement positions from the Departments of General Services and F & A to the newly established Office along with funding for these positions as well as all contracts, procurements in process, and documents in existence within the departments.

Effective July 1, 2011, requires the CPO to establish a single procurement Web site that will include information regarding how to register for and do business with the state as well as information on all procurements within the state both in process and previously awarded.

Effective October 1, 2011, requires the CPO to develop a transition plan that includes the implementation actions by date to consolidate the procurement and contracting for goods, services, and grants as well as the disposal of any goods and services by the state. Requires the CPO to develop proposed consolidated statutes, rules and regulations, standards, and procedures

to be followed as well as establish processes for central procurement, central grant management, central performance and quality assurance, central bidder relations management, and a central process for disposal of goods. Requires the CPO to develop and conduct training for the Office and agency procurement staff.

Authorizes the Comptroller to examine and approve all procurements, contracts, grants, and other documents that would potentially incur financial obligations against the state. Requires all requests to procure goods or services by non-competitive contract must be filed with the Fiscal Review Committee (FRC), the Comptroller, and the CPO simultaneously. Establishes criteria for FRC review of any non-competitive contracts and competitive or non-competitive amendments. Requires FRC to provide agencies with policies regarding submission requirements for amendments. Requires the State Building Commission (SBC) and the Department of Transportation (TDOT) to file a report with FRC of all contracts awarded that would meet the submittal requirements within 30 days of award date. Establishes criteria that prohibit current and former public employees from participating in procurement transactions. Prohibits contractors and sub-contractors from demanding or receiving money not included in the bid price for work or for an agreement not to compete and creates a Class A misdemeanor for violations. Removes all references to “the board of standards” and “the commissioner of general services” and replaces them with “the procurement commission” and “the chief procurement officer” respectively from Tenn. Code Ann. Title 12, Chapter 3, with exception of Tenn. Code Ann. § 12-3-806(a) and in Tenn. Code Ann. § 12-3-214 where all references to the “board of standards” will be replaced with “protest committee.” Removes all references to “the review committee” and “the commissioner of finance and administration” from Tenn. Code Ann. Title 12, Chapter 4, and replaces them with “protest committee” and “the chief procurement officer” respectively.

Amendment 017355 establishes the “Tennessee Small Business and Diversity Business Enterprise Procurement and Contracting Opportunity Act” (Act) and transfers the Governor’s Office of Diversity Business Enterprise (GoDBE) from DGS to the Commission. Adds the definitions of “good faith effort” and “other small business” to the Act and redefines “small business” to mean independent businesses that employ 30 or fewer people and have a total gross receipts of less than \$10 million. Includes cities, counties, and local governments that are recipients of state funds in the definition of “state agency” and requires GoDBE to work with each state agency to establish participation goals, ensure compliance with program requirements, and assist in the evaluation of proposals to determine if good faith efforts and a reasonable amount of participation are achieved. Requires the Commission to promulgate rules to establish certification eligibility, to establish goals for all state agencies, to establish bid solicitation and request for proposal processes to assist state agencies in achieving participation goals, and to establish criteria for good faith efforts. Requires each state agency to report participation data to GoDBE on a monthly basis and requires the Commission to report annual participation data to the Governor and the members of the General Assembly by December 31 of each year. Requires the Commission to identify Tennessee small businesses and to develop and provide training. Requires any corporation relocating to Tennessee as a result of the Department of Economic and Community Development’s Fast Track program to strive to achieve small business participation in their procurements and to provide a quarterly report of contracts awarded to small and diversity businesses to GoDBE. Requires an allowance to be given to Tennessee Small

Businesses during the evaluation portion of bids and proposals for state purchase orders and contracts. This amendment takes effect January 1, 2011.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$419,200/FY10-11
\$806,400/FY11-12 and Subsequent Years

Other Fiscal Impact – There will be a shift in payroll and operational costs of \$8,024,000 which includes 69 positions (\$6,304,000) within the Divisions of Purchasing and Property Utilization within the Department of General Services and 19 positions (\$1,720,000) from the Division of Resource Development and Support and the Office for Information Resources within the Department of Finance and Administration. This shift in allocations will not result in an increase to state expenditures.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Expenditures - \$336,400/FY10-11
\$1,366,500/FY11-12
\$1,286,500/FY12-13 and Subsequent Years

Increase Local Expenditures – Exceeds \$3,325,000/Recurring*

Other Fiscal Impact – In the future there will be a shift in payroll and operational costs of \$7,244,000 which includes 69 positions (\$6,304,000) from the Divisions of Purchasing and Property Utilization within the Department of General Services (DGS) and 10 positions (\$940,000) from the Division of Resource Development and Support and the Office for Information Resources (OIR) within the Department of Finance and Administration (F & A) to a Department that will be determined by the Governor. There will be a transfer of 5 positions (\$835,400) in the Governor’s Office of Diversity Business Enterprise (GoDBE) to the Procurement Commission. This shift in allocations will not result in an increase to state expenditures.

Assumptions applied to amendments:

- The Procurement Commission will meet at least once per year in Nashville. There will be no increase in state expenditures for Commission meetings.
- The Protest Committee will meet as necessary to hear and resolve protest. These Committee meetings will be held in Nashville and will result in no increase in state expenditures.
- The Procurement Council will meet at least twice per year in Nashville. The five voting members of the Council will not receive travel reimbursements as they will represent offices located in Nashville. Recurring increase in state expenditures for travel reimbursement for seven non-voting members of the council representing the bidder and

vendor community is estimated to be \$1,081.08 (\$154.44 mileage x 7 members) for each meeting for a total recurring increase in state expenditures in FY11-12 and subsequent years of \$2,162.16 (\$1,081 x 2).

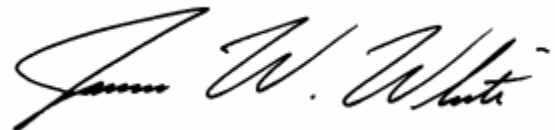
- According to F & A, there will be a one-time increase in expenditures for the development of the grant and sub-grant recipient database that will equal \$80,000.
- The Office of the CPO will consist of four staff members to include the CPO, Deputy CPO, Chief Procurement Oversight Officer and one administrative assistant. Given the March 31, 2011, appointment date for the CPO, the FY10-11 expenditures for salary, benefits, and operational supplies for that position for the three month period will be \$51,250 (\$195,000 salary and benefits x 25% + \$10,000 operational supplies x 25%). All four newly established positions will be filled by July 1, 2011, in order to meet the July 1, and October 1, 2011 deadlines. The recurring state expenditures for FY11-12 and subsequent years for the four new positions created for the Office of the CPO total \$580,166 which includes salaries (\$345,706), benefits (\$194,460), and operational supplies (\$40,000).
- There will be a not significant increase in state expenditures for the provision of contracting reports to FRC by SBC and TDOT.
- There will be a not significant increase in state expenditures for the expanded review of contracting documents or the provision of policies to agencies and departments by the FRC.
- A small increase in cases in the court system, which will result in additional state and local government expenditures for processing the cases and additional state and local government revenue from fees, taxes and costs collected. These expenditures and revenue are estimated to be not significant.
- According to DGS, there are currently five positions in GoDBE that would be transferred to the Commission with salaries and an operating budget of \$835,377. It is unclear as to which state agency would be responsible for providing support services to GoDBE once this move has taken place and therefore the additional costs associated with that support are unable to be quantified at this time.
- According to DGS, there will be the need for additional staff within GoDBE. It is estimated that an additional 10 positions would be necessary at a total recurring cost of \$654,178 which includes salaries (\$460,320), benefits (\$156,508), office lease (\$21,600), and operating costs (\$15,750). There will be a one-time cost of \$67,000 for office set-up. It is estimated that travel and training expenses will exceed \$50,000 annually to meet the requirements of the bill.
- There will be a total of 10 new positions and a shift of 5 positions currently residing in GoDBE to the newly created Commission as a result of the implementation of this bill. Given the January 1, 2011, implementation of the shift, it is estimated that new staff will be in place by March 1, 2011, and result in an increase in state expenditures for FY10-11 of \$285,100 which includes one-time costs of \$67,000 and salaries, benefits, and operating costs for four months of \$218,100. The recurring state expenditures for FY11-12 and subsequent years exceeds \$704,178 which includes salaries, benefits, operating costs, and travel for the 10 additional employees.
- There will be a total of 4 new positions and a shift of 79 positions currently residing in DGS and F&A to the newly created procurement office in the department that will be determined by the Governor as a result of the implementation of this bill.

- Total increase in state expenditures for FY10-11 equal \$336,350 (\$51,250 for the CPO salary, benefits, and operating supplies + \$67,000 one-time costs + \$218,100 salaries, benefits, and operating costs for four months for GoDBE). . Total increase in state expenditures for FY11-12 equal \$1,366,506.16 (\$2,162.16 Council travel + \$580,166 CPO office staff + \$80,000 one-time database costs + \$704,178 GoDBE). Total increase in state expenditures for FY12-13 equal \$1,286,506.16 (\$2,162.16 Council travel + \$580,166 CPO office staff + \$704,178 GoDBE).
- According to the Comptroller, there are 95 counties, 346 municipalities, 208 utility districts, 22 special school districts, and an unknown number of quasi-governmental agencies that receive state funding and will be required to comply with the provisions of this bill.
- According to the Comptroller, each county would need to hire an additional staff member at a cost of \$35,000 per employee which would result in a recurring increase in local expenditures of \$3,325,000. It is unknown if municipalities, utility districts, special school districts, or the quasi-governmental agencies will need additional employees; therefore, the resulting increase in recurring local expenditures is estimated to exceed \$3,325,000.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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